

**Appl. No. 10/762,782**

Amdt. dated April 24, 2006

Reply to Office Action Summary of 01/13/2006

### **REMARKS/ARGUMENTS**

With respect to the **Claim Rejections-35USC § 112**, the Applicants' Remarks/Arguments are:

The Applicants consider that the Examiner's statement that there is insufficient antecedent basis for the limitation "the diameter" in line 8 of Claim 3 is not well founded.

The Applicants know that the first time an element, or part, or step is mentioned, the indefinite article "a" or "an" should be used. They also know, that an ambiguity would exist if an element were preceded by the definite article (the), when first mentioned in the claim. The question which would naturally be asked would be: What...

For example: The socket      What socket?

The Applicants also know that only when an element or part is referred to again, the definite article should be used.

But in the present case there is an exception. Each perforation is necessarily circular since it is defined as having a diameter, and, as a corollary of that, a perforation could be provided with one /only one/ diameter. Therefore, if the definite article "the" is used with "diameter", unequivocally it will be correctly understood and no one will superfluously ask as in the above example "What (diameter)?".

Conversely, if "a diameter" were used for the first time in a claim with such terms as hole, opening, aperture, orifice or perforation, this could confuse the reader by leaving him/her with

the impression that there is not only one diameter.

For the foregoing reason, the Applicants believe that it would be proper to maintain the use of “the diameter”.

With respect to the wording “closely to one extremity” (lines 12-13), the Applicants comply with the Examiner's reason for rejection by replacing this wording with “in proximity of”, already used in the same claim and not objected by the Examiner.

It is well established in Claims Drafting the use of the following adjectives and adverbs: proximate (proximately); adjacent to; contiguous (contiguously); and adjoining; near (nearly).

According to THE OXFORD DICTIONARY AND THESAURUS, “proximate” has as an equivalent “nearest or next”, “adjacent” has as an equivalent “lying near or adjoining”, “contiguous” has as an equivalent “near” and “near” has an equivalent “closely”.

The Applicants also found that the term “closely” is not considered a “pariah” in claims.

One could cite, only as examples, US patents 7,025,597; 6,713,907; 4,800,270 and 4,681,546, wherein the term “closely” is included in claim 1.

The Applicants consider that Examiner's statement that there is insufficient antecedent basis for the limitation “said perforation” in line 14 of Claim 3 is not justified.

“Said perforation” is part of the wording “the diameter of each said perforation” which derives its antecedent basis from the wording “the diameter of each perforation” in lines 8-9 of Claim 3 preamble.

The Applicants consider that Examiner's statement that there is insufficient antecedent basis for the limitation “said distance” in line 14 of Claim 3 is also not justified.

“Said distance” is part of the wording “said distance between two consecutive perforations” which derives its antecedent basis from the wording “a distance between two consecutive perforations” in line 9 of Claim 3 preamble.

The Examiner's statement *that says, quote: {[The recitation, "both the diameter of each said pin and a distance between said two pins are so commensurate with both said diameter of each said perforation and said distance between two consecutive perforations that a light-press fit between the former and the latter, when engaged together, occurs"} in lines 13-15 of Claim3, which Examiner's statement continues by saying that, quote: [the recitation "the internal diameter of said socket being commensurate with the external diameter of said tubular"] in lines 19-20 of Claim 3, render the claims indefinite. In particular, neither the "perforations" or the "tubular element" are an element of the claimed device and it is improper to define claimed structure based on a comparison to some unclaimed element.}*, is respectfully traversed by the Applicants.

The Applicants agree with the Examiner that neither the "perforations" or the "tubular element" are elements of the claimed device. If they were, only the individual users could infringe and not the manufacturer and the distributors.

In order to emphasize this fact, they were recited in the preamble of Claim 3 and preceded by the term "adapted". They are absolutely indispensable to provide context for the limitations of the body of the claim, i.e. to give meanings to these limitations. "Building up" of antecedents in the preamble of a claim, without by this restricting the scope of the combination of elements set forth in the body of a claim, is a generalized procedure in the patent practice. For example, in a claim for a printer (see U.S. Pat. No. 6,523,937) the term "paper" is incorporated, as being necessary to clearly and completely define that printer. If "paper" would be one of the limitations of the claimed printer, only those printers comprising a "paper", which is not the case with the printers in stores and at the manufacturer, would infringe a claim for this printer. To start Court procedures separately, against each user with "paper" in his printer, is impractical. With respect to the wording "disposed closely to another extremity of said flat base" (line17), which includes the relative term "closely", the Applicants comply with the Examiner's reason for

rejection and replace this wording with “in proximity of”, already used in the same claim and non objected by the Examiner.

With respect to the Examiner's rejection concerning the insufficient antecedent basis for the limitations “the external diameter” and “said tubular element” in line 20 of Claim 3, the Applicants bring to the Examiner's attention that “a tubular element” has been previously used in line 3 of the preamble of Claim 3 and, impliedly, being tubular, has external and internal diameter. Thus, the Applicants believe that is logically justified if an element necessarily has some feature, a definite article is used to recite that feature, in the present case “the external diameter of said tubular element”.

The socket being intended to interengage with the tubular element, must necessarily have a cylindrical opening to receive the latter. By mentioning “the internal diameter of the socket”, one can directly infer that the socket has “only one diameter”, which must be internal in order to engage the external diameter of the tubular element.

With respect to the rejection of Claim 3 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. Des. 319,573 (Rogers '573), the Applicants respectfully consider this rejection as non founded.

Brackets, similar to the foregoing cited patent, and furniture (for home and office) having panels with perforations using a conventional, well established diameter and disposed vertically and successively at a conventional, well established distance, coexisted independently for a long time.

It is known that a reference must be considered for all that it teaches. There are no teachings, suggestions or a inference in the above reference that would have lead one to use the bracket with furniture provided with the mentioned perforations. Hence, the Applicants respectfully disagree with the rejection based on this reference since they believe that it is improper to take

the latter and give it the meanings it would not have had to one skilled in the art having no knowledge of the present claimed invention.

Thus, one can conclude that the claimed invention has distinguishing characteristics: the diameter of the pins and the distance between them, both commensurate with the perforations in the panels; and there is an inseparability of the article (bracket) and its abovementioned distinguishing characteristics that enable the use of the bracket with those panels.

As stated before, the antecedents in the preamble, not part of the invention, are essential to provide meaning to the distinguishing characteristics.

Based on the foregoing considerations, the Applicants respectfully request the reconsideration of the Examiner's rejection.

Respectfully submitted,

By 

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Attachments: Power of Attorney (2)